IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 19698 of 2005(T)

PETITIONER:

THE PRESIDENT,
CHELORA KSHEERA VYVASAYA CO-OEPRATIVE SOCIETY LTD
NO.C.26(D), THILANUR P.O. KAPPAD, KANNUR 6.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

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1. THE LABOUR COURT, KANNUR.

2. K.SURESHAN, S/O.GOVINDAN,
THILANUR P.O. KAPPAD, KANNUR.

BY ADV. SRI.P.M.PAREETH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 17/07/2007, THE COURT ON THE SAME DAYDELIVERED THE

FOLLOWING:

APPENDIX (WP(C) NO.19698 OF 2005)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the judgment dtd.9.7.2002 in OP No.20378 of 1997.

Ext.P2: Copy of the Claim statement filed by the second respondent herein before R1.

Ext.P3: Copy of the Award dtd.25.11.2004 in ID No.72 of 1993 on the file of R1.

Ext.P4: Copy of the receipt dtd.21.2.2005.

Ext.P5: Copy of the receipt dtd.26.5.2005.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 19698 OF 2005 - T

Dated this the 17th day of July, 2007

J U D G M E N T

The management in I.D.No.72/93 on the file of the Labour Court, Kannur is the petitioner herein. The petitioner is challenging Ext.P3 award passed by the Labour Court in that I.D. The dispute referred for adjudication was with regard to the dismissal of Sri.K.Sureshan, Secretary from the service of the Chelora Ksheera Vyavasaya Co-operative Society Ltd., the petitioner- Society herein with effect from 4.9.90.

2. Originally, the question of validity of the enquiry conducted against the workman was considered as a preliminary point and held against the management. Later on, the management was granted an opportunity to adduce evidence. The Labour Court considered the evidence and found that none of the charges were proved. The petitioner- management had raised a contention that the workman involved in the I.D. is not a workman as defined under the Industrial Disputes Act as he was the Secretary of the Society functioning in a managerial

capacity. Earlier, the petitioner approached this Court by filing O.P.No.20378 of 1997 challenging the findings of the Labour Court that the second respondent was not a workman as defined under the Industial Disputes Act. This Court, by Ext.P1 judgment, remanded the matter for fresh consideration. After considering afresh, the Labour Court again found that the second respondent is a workman as defined under the Act by Ext.P3 award. That finding is now under challenge before me. The contention of the petitioner is that the petitioner was working as a Secretary of the society. The bye-laws produced as M21 before the Labour Court, particularly clauses 23(b) and (c)and clause 25, would show that the second respondent was exercising duties and functions of a managerial nature is the contention raised. Counsel for the petitioner also would contend that the Co-operative Societies Act and Rules lay down the staff pattern of societies and going by Appendix-III of the Kerala Co-operative Societies Rules, every society should have a Secretary as an executive head and since

the day-to-day affairs of the society are to be controlled by the Secretary, he is an employee in the managerial cadre and therefore, the finding of the Labour Court in that regard is wrong.

3. In answer to the same, the learned counsel for the workman would contend that the petitioner was dismissed in the year 1990. At that time, Appendix III of the Kerala Co-operative Societies Rules as it stands today was not there and at that time, there was no staff pattern making it compulsory for any society to appoint any Secretary. He would submit that in this particular society, at the relevant time, the day-to-day affairs of the society were managed by the President of the Society. He would submit that the society was functioning in one room. The society was engaged in the collection and distribution of milk. Originally, there was an honorary Secretary. The workman was the only Clerk of the Society with two other salesmen as employees. Later on, the workman was promoted with the designation of Secretary, but he continued to exercise the very same

duties and functions of a Clerk. He points out that this has been amply proved by the evidence of the witnesses of the management themselves.

4. I have considered the rival contentions in detail. The counsel for the petitioner would heavily rely on the decision of this Court reported in K.M.Ulahannan v. Labour Court and Another (1996(1) KLJ 825) in which the Division Bench of this Court held that the Secretary of a Co-operative Society, who is holding the post in a managerial capacity, cannot be considered as a workman under section 2(s) of the Industrial Disputes Act. Relying on this judgment, the learned counsel for the petitioner would contend that the Secretary of the society is in the managerial cadre in so far as he is executive head of the society. He would submit that the President and the Director Board members only deal with policy decisions and the Secretary is the person who is to implement those decisions for which he is invested with managerial powers. He contends that the bye-laws of the Society amply prove the duties and

functions of the Secretary which are of managerial nature. But, these contentions are not supported by the evidence of the management witnesses themselves as was noted by the Labour Court. The discussion on this particular point in Ext.P3 award is contained in para 13. The same reads thus.

> ……..”The counsel for the management brought to my notice that Ext.M21 bye-law of the society at clause 23(b) & (c) shown in paged No.13 of the bye-law states about the nature of employment of the Secretary. Clause 25 shown in page 15 also shows the duties of the Secretary. According to the counsel there also it was specifically stated that the Secretary was in-charge of the entire society. The counsel for the workman on the other hand would contend that what is written in the bye-law is only printed letters and the same will not decide the actual duties and functions performed by the employee. It may be noted that in cross-examiantion MW8 has categorically stated that he cannot point out any particular additional duty done in the capacity of Secretary by Sureshan over and above the duties as that of a Clerk. MW8 was not able to show what are the duties assigned to Sureshan while he was working as Clerk and whether there was any change in his duties after his elevation to the post of Secretary. A reading of evidence tendered by MW8 shows that Sureshan was performing the duties of a Clerk under the guidance and supervision of the Board of Directors. He has no independent authority to take any decision regarding the day-to-day affairs of the

society, financial matters of the society, appointment and control of the employees under the society and all those functions are decided by the Board of Directors. It may be noted that even before the remand of the case in the original trial stage MW1 Lakshmanan and MW3 Sundaran Nambiar who were the President of the society in 1989, 1990, 1991 period were examined and it has come out in evidence that before the promotion of Sureshan as Secretary he was doing the very same work which he was doing after promotion. Admittedly before promotion he was doing only clerical work. After promotion also th substantial work was clerical in nature. It is relevant to note that even before promotion, there was no Secretary, or some time there was honorary Secretary and treasurer. From 1985 onwards, the Society was under the control of Administrator. Then there was no Secretary. Evidence available in the case shows that his work was substantially clerical in nature, though incidentally he might have acted as Secretary that too under the guidance of the President. Under such circumstances, it can never be said that Sureshan was in full charge of executive administration of the society. As contemplated in Ulahannan's case (1996(1) KLJ 825) to repeat again, in order to apply the said dictum a person who is employed as the head of the administration of the society alone can be deemed to be discharging duties in managerial capacity. Whereas Sureshan can never be described as head of the administration of the Society who is in full charge of executive administration of the society. Therefore, he can only be understood as a workman coming under the definition provided in the Industrial Disputes Act. Point found accordingly. “

(Emphasis supplied)

When the management witnesses themselves, categorically deposed before the Labour Court that the second respondent was performing the duties of a Clerk under the guidance and supervision of the Board of Directors, and that even after promotion as Secretary, the second respondent was doing the very same work which he was doing after promotion, I cannot find fault with Ext.P3 award holding that the second respondent was in fact a workman as defined under the Industrial Disputes Act. Just because a person is designated as Secretary, he does not become a person in the managerial cadre. It is settled law that nomenclature alone would not decide the question as to whether a person is employed in a managerial capacity. It essentially depends on the duties and functioning performed by the employee. When the management witnesses themselves categorically deposed before the Labour Court that the second respondent was doing only the work of a Clerk, I cannot find that the findings of the Labour Court are in any way perverse in that regard.

5. The only contention raised by the petitioner before me being that the second respondent is not a workman as defined under the Industrial Disputes Act, no other point requires to be considered in this writ petition. Since I have affirmed the finding of the Labour Court that the second respondent was a workman, as defined in the Industrial Disputes Act, necessarily Ext.P3 has to be upheld. I do so. Accordingly, the writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007